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10 ROADS EXPRESS, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DAVID JR. DOMINGUEZ, an individual and
on behalf of all others similarly situated,

Plaintiff,

v.

10 ROADS EXPRESS, LLC, a Delaware
limited liability company; STEVEN BAILEY,
an individual; and DOES 1 through 100,
inclusive,

Defendants.

No.

[Alameda County Superior Court
Action No. 24CV063043]

**DEFENDANT 10 ROADS EXPRESS,
LLC'S NOTICE OF REMOVAL**

DEMAND FOR JURY TRIAL

Complaint Filed: February 7, 2024
Trial Date: None Set

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**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE that Defendant 10 ROADS EXPRESS, LLC (hereinafter referred to as “Defendant”), by and through their attorneys of record, hereby remove this state court action to the United States District Court for the Northern District of California as described below:

1. On or about February 7, 2024, Plaintiff DAVID JR. DOMINGUEZ, an individual and on behalf of all others similarly situated (hereinafter referred to as “Plaintiff”) filed a complaint in the Superior Court of the State of California, in and for the County of Alameda, under case number 24CV063043 (the “Complaint”), naming 10 Roads Express, LLC as a Defendant. Declaration Raymond A. Greene, III (“Greene Decl.”), ¶ 2, Exh. A.

2. The Complaint is brought as a Class Action, pursuant to Code of Civil Procedure section 382, against 10 Roads Express, LLC, and any of its respective subsidiaries or affiliated companies with the State of California (“10 Roads”); and Steven Bailey (“Bailey” and collectively, with 10 Roads and DOES 1 through 100, as further defined below, “Defendants”) on behalf of Plaintiff and all other current and former non-exempt California employees by or formerly employed by Defendants (Class Members”).

3. The Complaint alleges ten (10) underlying violations of the California Labor Code: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Waiting Time Penalties; (6) Wage Statement Violations; (7) Failure to Timely Pay Wages; (8) Failure to Indemnify; (9) Violation of Labor Code § 227.3; and (10) Unfair Competition.

4. Plaintiff completed Service of the Complaint on 10 Roads Express, LLC on March 29, 2024. *Id.*, ¶ 3, Exh. B. Under 28 U.S.C. section 1446(b)(3), 10 Roads Express, LLC has until April 29, 2024 to exercise its right to remove. This Notice of Removal is therefore timely.

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5. Defendant filed its Answer to Plaintiff's Complaint in the Superior Court of the State of California, in and for the County of Alameda, and served on Plaintiff, on April 19, 2024. *Id.*, ¶ 4, Exh. C.

6. Upon filing this Notice of Removal, Defendant's Notice to Adverse Party of Removal to Federal Court will be contemporaneously filed in Action No. 24CV063043 of the Superior Court of the State of California, in and for the County of Alameda. *Id.*, ¶ 5, Exh. D.

7. Defendant demands a jury trial of twelve jurors, pursuant to F.R.C.P. Rule 48.

JURISDICTION

8. **Federal Question:** This civil action arises out of the laws of the United States under 28 U.S.C. section 1331. Although all of Plaintiff's causes of action arise from alleged violations of California Labor Code section 558.1, those claims are preempted by Federal law.

a. **Conflict Preemption:** In the interstate trucking context, meal and rest breaks are governed by the "Hours of Service" rules contained in the Federal Motor Carriers Safety Act *et seq.* ("FMSCA") 49 U.S.C. section 31131. The FMSCA, a department of the United States Department of Transportation, expressly authorizes the Secretary of Transportation to make preemption determinations on the FMSCA. 49 C.F.R. section 1.87(f). A state statute is "void" upon a determination that a state statute is preempted by the FMSCA. *City of Columbus v. Ours Garage & Wrecker Service, Inc.*, 536 U.S. 424, 441-42 (2002).

b. On December 28, 2018, the FMSCA determined that California's meal and rest break statutes are preempted by the FMSCA's Hours of Service rules. [FMSCA Docket No. FMSCA-0304.] Subsequent decisions in both California Superior Courts and California District Courts have recognized the preemption. See e.g. *Ayala v. U.S. Express Enterprises, Inc.*, 2019 WL 1986760 (C.D. Cal. 2019) ("The Court currently has no authority to enforce the [MRB Rules] under which Plaintiff brings his first cause of action"); *Robinson v. Chefs' Warehouse, Inc.*, 2019 WL 4278926 (N.D. Cal. 2019) (finding the reasoning of Ayala persuasive and holding the court had no authority to enforce the preempted MRB Rules); *Henry v. Cent. Freight Lines, Inc.*, 2019 WL 2465330 (E.D. Cal. 2019) (granting summary judgment on all California meal and rest break claims as preempted); and *Connell v. Heartland Express, Inc.*,

2020 WL 813022 (E.D. Cal. 2020) (holding that the FMCSA order preempts California’s MRB Rules and that the court cannot enforce California’s MRB Rules). This includes the Los Angeles County Superior Court. See *In re Garda Wage and Hour Cases*, Case No. JCCP 4828 (Cal. Sup. Ct. 2019).

9. **Diversity Jurisdiction:** This action is a civil action over which this Court has original jurisdiction based on diversity of citizenship pursuant to 28 U.S.C. section 1332(a), and which may be removed to this Court by Defendant pursuant to 28 U.S.C. section 1444(b) because it is a civil action between citizens of different states and because the amount in controversy exceeds \$75,000. Plaintiff and Defendant are, and have been at all times, citizens of different states. Therefore, complete diversity exists in this action as stated below:

a. **Plaintiff’s Citizenship:** Plaintiff is a resident of the State of California and resides in Alameda County. For purposes of evaluating diversity, a natural person is a “citizen” of the state in which he or she is domiciled. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). “A person’s domicile is her permanent home, where she resides with the intention to remain or to which she intends to return.” *Id.* Accordingly, Plaintiff is domiciled in and a citizen of California.

b. **Defendant 10 Roads Express, LLC’s Citizenship:** For purposes of diversity jurisdiction, “a corporation shall be deemed to be a citizen of every State ... by which it has been incorporated and of the State ... where it has its principal place of business ...” 28 U.S.C. § 1332(c)(1). Defendant 10 Roads Express, LLC is incorporated under the laws of the State of Minnesota. Defendant’s headquarters and principal place of business is in Eagan, Minnesota. At all times during the class period, Defendant’s corporate leadership directed, controlled, and coordinated the corporation’s activities, thus satisfying the “nerve center” test as held in *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) and *Breitman v. May Co. California*, 37 F.3d 562, 564 (9th Cir. 1994) (corporation was citizen of state in which its corporate headquarters were located and where its executive and administrative functions were performed.) Accordingly, 10 Roads Express, LLC is domiciled in and a citizen of Minnesota.

1 Because Plaintiff is a citizen of a state different than Defendant 10 Roads Express, LLC,
 2 diversity exists in this action and facilitates removal to this Court.

3 c. **Jurisdictional Amount:** This Court has jurisdiction over this case based
 4 on Plaintiff's allegations in the Complaint on behalf of himself and others similarly situated, the
 5 amount placed in controversy by the named Plaintiff exceeds \$75,000 or the aggregate amount
 6 placed in controversy by the Class Members exceeds Five Million Dollars, pursuant to 28 U.S.C
 7 § 1332(d) (CAFA).

8 **NOTICE TO PLAINTIFF AND STATE COURT**

9 10. Pursuant to 28 U.S.C. section 1446(d), contemporaneously with the filing of this
 10 Notice of Removal with this Court, written notice of such filing will be provided by the
 11 undersigned to Plaintiff, and a copy of the Notice of Removal will be filed with the Clerk of the
 12 Superior Court of the State of California, in and for the County of Alameda.

13 11. Venue is appropriate in the Northern District of California under 28 U.S.C
 14 sections 1441(a) and 1446(a) because the Northern District of California embraces the Superior
 15 Court of the State of California, in and for the County of Alameda where this action was
 16 originally filed.

17 **NOTICE TO ADVERSE PARTIES**

18 12. Notice to Adverse Party of Notice of Removal will be contemporaneously filed in
 19 Action No. 24CV063043 in the Superior Court of the State of California, in and for the County
 20 of Alameda.

21 13. Pursuant to the provisions of 28 U.S.C. section 1446, Defendant attaches and
 22 incorporates by reference, copies of the following documents served by the Parties in this action:

- 23 a) Plaintiff's Class Action Complaint;
- 24 b) Notice of Service of Process of Plaintiff's Summons and Class Action
- 25 Complaint served upon Defendant;
- 26 c) Defendant's Answer to Plaintiff's Class Action Complaint; and
- 27 d) Notice to the Superior Court of the State of California, in and for the
- 28 County of Alameda and Adverse Parties of Removal.

PRAYER

WHEREFORE, Defendant 10 ROADS EXPRESS LLC prays that the above-entitled action, formerly pending in the Superior Court of the State of California, in and for the County of Alameda, be removed to the United States District Court for the Northern District of California and that this action proceed in that Court as an action properly removed thereto.

DATED: April 23, 2024

BURNHAM BROWN

By **Raymond A. Greene, III**
RAYMOND A. GREENE, III
Attorneys for Defendant
10 ROADS EXPRESS, LLC

4857-3126-9815, v. 1